

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KYLE KENNETH SMITH,

Defendant.

CR 23–5–M–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 25.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

The Defendant is charged with one count of prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Mr. Smith’s guilty plea as to the offense after he appeared before her pursuant to Federal Rule of Criminal

Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 25) is ADOPTED in full.

IT IS FURTHER ORDERED that Mr. Smith's motion to change plea (Doc. 19) is GRANTED.

IT IS FURTHER ORDERED that Mr. Smith is adjudged guilty as charged in the Indictment.

DATED this 14th day of September, 2023.



Dana L. Christensen, District Judge
United States District Court